SUPREME COURT, U. S

JUN 22 1970

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No. [redacted]234

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM [redacted] 1970

WM. E. GOETZ, ET AL.

Appellants

v.

BOARD OF REGENTS OF THE STATE TEACHERS COLLEGES OF TEXAS, NOW BOARD OF REGENTS, STATE SENIOR COLLEGES, ET AL.

Appellees

MOTION TO DISMISS OR AFFIRM

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NO. 1666

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OCTOBER TERM 1969

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Appellants

v.

BOARD OF REGENTS OF THE STATE TEACHERS COLLEGES OF TEXAS, NOW BOARD OF REGENTS, STATE SENIOR COLLEGES, ET AL.

Appellees

MOTION TO DISMISS OR AFFIRM

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Appellees, State of Texas, Board of Regents of the State Teachers Colleges of Texas, now Board of Regents, State Senior Colleges, and the individual members of such Board in their official capacities, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that this appeal be dismissed on the ground that the case does not present a substantial Federal question, and in the alternative, move that the case be affirmed on the ground that the questions are so unsubstantial as not to warrant further argument.

annum.

Robert G. Hughes,
Associate Justice

Reversed and Rendered
Filed: April 23, 1969

STATEMENT OF THE CASE

This action is an appeal from a final judgment of the Supreme Court of Texas, the highest court of the State of Texas, in a declaratory judgment suit to adjudicate the contractual obligation of the State of Texas in a contract between Wm. E., Howard C. and Walter E. Goetz, partners, and the Board of Regents of the State Teachers Colleges of Texas, now Board of Regents, State Senior Colleges, an agency of the State of Texas.

The facts of this case are stated in the opinion of the Supreme Court of Texas, which opinion is set forth in Appellants' Appendix, pages 13-16, of their jurisdictional statement, and is reported at —— S.W.2d ——.

OPINIONS BELOW

The trial court in the instant case entered a declaratory judgment wherein the trial court declared that the legal obligation of the State of Texas in a construction contract dated August 14, 1958, is that stated in the written agreement and no legal obligation exists to pay Appellants an additional $17,000 above the contract price stated in the written agreement between Appellants and Appellees, and denied recovery by Appellants. The Court of Civil Appeals for the Third Supreme Judicial District of Texas reversed the judgment of the trial court on April 23, 1969. The Supreme Court of Texas on February 11, 1970, reversed the judgment of the Court of Civil Appeals for the Third Supreme Judicial District and affirmed the judgment of the trial court.

JURISDICTION QUESTIONED

It is questioned by Appellees that any substantial Federal question is presented for adjudication by the Supreme Court of the United States.

In the alternative, Appellees contend that the judgment of the Supreme Court of Texas should be affirmed on the ground that the questions are so unsubstantial as not to warrant further argument.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statute and the constitutional provisions of the Constitution of Texas involved are produced in the Appendix to this motion.

ARGUMENT

This case is a declaratory judgment suit instituted by Wm. E., Howard C. and Walter E. Goetz, building contractors, brought against the Board of Regents of the State Teachers Colleges of Texas, now Board of Regents, State Senior Colleges, an agency of the State of Texas, seeking to have declared and adjudicated the obligations of the parties to a written contract dated August 14, 1958, to construct certain additions to the library and science buildings at Southwest Texas State University in San Marcos, Texas. Such declaration and adjudication has been made by the Supreme Court of Texas.

The Supreme Court of the United States will not review judgments of state courts that rest on adequate and independent state grounds. *Jankovich v. Indiana Toll Road Commission*, 379 U.S. 487; *Cramp v. Board*

of Public Instruction, 368 U.S. 278; *Henry v. Mississippi*, 379 U.S. 443; *Black v. Cutter Laboratories*, 351 U.S. 292, 298; *Herb v. Pitcairn*, 324 U.S. 117, 125; *Klinger v. State of Missouri*, 13 Wall. (U.S.) 257, 263; *Murdock v. Memphis*, 20 Wall. (U.S.) 590, 636; *Berea College v. Kentucky*, 211 U.S. 45, 53; *Enterprise Irrig. Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164; *Fox Corp. v. Mulloy*, 296 U.S. 207, 210; *Dixon v. Duffy*, 342 U.S. 33; *Young v. Rogen*, 337 U.S. 325.

The cases are also equally clear that the construction of state laws is the exclusive responsibility of state courts. *Speiser v. Randall*, 357 U.S. 513; *Lerner v. Casey*, 357 U.S. 468; *Albertson v. Millard*, 345 U.S. 242; *United States v. Burnison*, 339 U.S. 87; *Oklahoma Tax Commission v. Texas Co.*, 336 U.S. 342; *Panhandle Eastern Pipe Line Co. v. Public Service Commission*, 332 U.S. 507.

Applying the foregoing principle to the instant case, it is respectfully submitted that there is no substantial Federal question presented. The case involves adjudication of contractual obligations of a contract between building contractors doing business in the State of Texas and an agency of the State of Texas. The contract was entered into and performed in the State of Texas and the obligations of such contract are governed by state law. Therefore the judgment of the Supreme Court of Texas rests on adequate and independent state grounds. The questions here submitted are so unsubstantial as not to warrant further argument.

In view of the foregoing, it is respectfully submitted that the judgment and the decree of the Supreme Court of Texas should be affirmed or in the alternative that this appeal be dismissed.

CONCLUSION

We respectfully submit therefore that Appellants have not presented a substantial Federal question and that this appeal should be dismissed, or the judgment of the Supreme Court of Texas should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alfred W. Walker, Executive Assistant Attorney General of Texas, and a member of the Bar of the Supreme Court of the United States, and I do hereby certify that a copy of the foregoing Motion has been forwarded by United States Mail, First Class, postage prepaid, to attorneys for Appellants, Mr. Earle Cobb, Jr. and Mr. James K. Gardner, 825 National Bank of Commerce Building, San Antonio, Texas 78205.

ALFRED W. WALKER
Executive Assistant Attorney General

APPENDIX

Constitution and Statutes Involved

Constitution of Texas, Article III, Section 44:

> "The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, *but shall not grant extra compensation to any* officer, agent, servant, or *public contractors, after such public service shall have been performed or contract entered into, for the performance of the same;* nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law." (Emphasis added.)

Constitution of Texas, Article III, Section 51:

> "The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; . . ." (Exceptions not applicable.)

Texas Civil Statutes, Article 2647, Subdivision 7:

> "All appropriations made by the Legislature for the support and maintenance of State Teachers' Colleges, for the purchase of land or buildings for the use of such schools, *for the erection or repair of buildings,* for the purchase of apparatus, libraries or equipment of any kind or for any other improvement of any kind, *shall be disbursed under the direction and authority of the board of* regents: . . ." (Emphasis added.)